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2 **Instructions:**

3 (1) Dial: 1-888-363-4749. For hearings held at the hour, please call in 10 minutes before the
4 hour to avoid AT&T conference call congestion.

5 (2) Enter Access Code: 9365479#
6

7 (3) Press the # sign

8 (4) Enter Security Code when prompted: 8574#

9 (5) Speak your name when prompted
10

11 **Guidelines:**

12 (1) Use a land line phone and not a cell phone, if possible. Do not use a speaker phone and do not
13 use "hands-free" if using a cell phone.

14 (2) Make the call from a quiet area where background noise is minimal.

15 (3) Mute your phone until the judge calls your case before speaking (press "*6" to mute or
16 unmute).

17 (4) Do not put the phone on hold at any time after the call is connected.

18 (5) In the event you are unable to connect to the conference call after following the above
19 procedures, please contact chambers at (206) 370-5310.
20
21

22 **MOTION**

23 **COME NOW** debtors Ronald Edgar Howell and Dee Lorene Shishido (hereafter
24 collectively referred to as "Debtors") and respectfully move the Court for an order of contempt
25 against Navient Corporation, and in support thereof state as follows:
26

27 1. Debtors commenced this case on October 1, 2015, by filing a voluntary petition
28 for relief under Chapter 13 of Title 11 of the United States Code.
29

2. On March 26, 2020, the Court entered a Discharge of Debtors After Completion of Chapter 13 Plan pursuant to 11 U.S.C. §1328(a). [Dkt. 43].

3. Debtors scheduled unsecured student loans owing to Sallie Mae.

CLAIM 3

4. On October 28, 2015, Navient Solutions, Inc., filed a proof of claim on behalf of United Student Aid Funds, Inc., for an unsecured student loan. [ECF Claims Register #3-1]. The claim stated that the amount of the claim was \$7,978.75. Attached to the proof of claim were a document entitled, "CLASS – 133-MONETARY HISTORY," which appears to be a transaction history, and a redacted Federal Family Education Loan Program (FFELP) Loan Application and Master Promissory Note executed by joint debtor Dee L. Shishido on July 9, 2006. The transaction history states that the original loan principal amount was \$10,576.00, and the amount owing as of October 4, 2015, was \$7,978.15.

5. On May 29, 2018, an amended proof of claim was filed by United Student Aid Funds, Inc. (USAF) to amend Claim No. 3. [ECF Claims Register #3-2]. In addition to changing the identity of the creditor from "Navient Solutions, Inc., on behalf of United Student Aid Funds, Inc.," the amended proof of claim changed the address where payments should be sent from:

USA Funds – MC E2148
Attn: Deposit Operations
P.O. Box 6180
Indianapolis, IN 46206-6180

to the following:

United Student Aid Funds, Inc. (USAF)
PO Box 809142
Chicago IL 60680

The amended proof of claim acknowledged that it was amending Claim No. 3 filed on October 28, 2015.

CLAIM 4

6. On October 28, 2015, Navient Solutions, Inc., filed a proof of claim on behalf of United Student Aid Funds, Inc., for an unsecured student loan. [ECF Claims Register #4-1]. The claim stated that the amount of the claim was \$4,552.45. Attached to the proof of claim were a document entitled, "CLASS – 133-MONETARY HISTORY," which appears to be a transaction history, and a redacted Federal Family Education Loan Program (FFELP) Loan Application and Master Promissory Note executed by joint debtor Dee L. Shishido on July 9, 2006. The transaction history states that the original loan principal amount was \$5,835.00, and the amount owing as of October 1, 2015, was \$4,599.44, and as of October 24, 2015, was \$4,549.47, which reflected receipt of a payment in the amount of \$74.79.

7. On May 29, 2018, an amended proof of claim was filed by United Student Aid Funds, Inc. (USAF) to amend Claim No. 3. [ECF Claims Register #4-2]. In addition to changing the identity of the creditor from "Navient Solutions, Inc., on behalf of United Student Aid Funds, Inc.," the amended proof of claim changed the address where payments should be sent from:

USA Funds – MC E2148
Attn: Deposit Operations
P.O. Box 6180
Indianapolis, IN 46206-6180

to the following:

United Student Aid Funds, Inc. (USAF)
PO Box 809142
Chicago IL 60680

The amended proof of claim acknowledged that it was amending Claim No. 4 filed on October 28, 2015.

CLAIM 5

8. On October 28, 2015, Navient Solutions, Inc., filed a proof of claim on behalf of United Student Aid Funds, Inc., for an unsecured student loan. [ECF Claims Register #5-1]. The claim stated that the amount of the claim was \$4,877.16. Attached to the proof of claim were a document entitled, "CLASS – 133-MONETARY HISTORY," which appears to be a transaction history, and a redacted Federal Family Education Loan Program (FFELP) Loan Application and Master Promissory Note executed by joint debtor Dee L. Shishido on July 9, 2006. The transaction history states that the original loan principal amount was \$5,963.00; the amount owing as of October 1, 2015, was \$4,927.49; and the amount owing as of October 24, 2015, was \$4,873.76, reflecting receipt of a payment in the amount of \$80.10.

9. On May 29, 2018, an amended proof of claim was filed by United Student Aid Funds, Inc. (USAF) to amend Claim No. 3. [ECF Claims Register #3-2]. In addition to changing the identity of the creditor from "Navient Solutions, Inc., on behalf of United Student Aid Funds, Inc.," the amended proof of claim changed the address where payments should be sent from:

USA Funds – MC E2148
Attn: Deposit Operations
P.O. Box 6180
Indianapolis, IN 46206-6180

to the following:

United Student Aid Funds, Inc. (USAF)
PO Box 809142
Chicago IL 60680

The amended proof of claim acknowledged that it was amending Claim No. 5 filed on October 28, 2015.

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TRUSTEE PAYMENTS

10. The Chapter 13 paid 100% of the amounts set forth in Claims 3, 4, and 5, pursuant to the Debtors' confirmed plan:

| <u>CLAIM</u> | <u>AMOUNT CLAIMED</u> | <u>AMOUNT PAID</u> |
|----------------------------|-----------------------|--------------------|
| Claim 3 (Trustee Claim 42) | \$7,978.75 | \$7,978.75 |
| Claim 4 (Trustee Claim 69) | \$4,552.45 | \$4,552.45 |
| Claim 5 (Trustee Claim 70) | \$4,877.17 | \$4,877.16 |

TOTAL PAID \$17,408.36

11. Attached hereto as Exhibits 1, 2, and 3 are the records posted on the 13Network of the dates and amounts of the Chapter 13 Trustee's payments in full of Claims 3, 4, and 5.

POST DISCHARGE ATTEMPTS TO COLLECT

12. On May 18, 2020, joint debtor Dee Shishido received an undated letter from "Navient" notifying her that "your student loans are now being serviced by Navient" and stating the following:

We've recently been notified that your bankruptcy case has concluded. Since the loans shown below were not discharged through your bankruptcy, you're now responsible for repaying the remaining balance of the loans, according to the terms of the promissory notes.

Attached hereto as Exhibit 4 is the May 18, 2020, letter sent to joint debtor Dee Shishido.

13. The following loans listed in the letter were the same loans that were the subject of Claims 3, 4, and 5 [ECF Claims Register Nos. 3-2, 4-2, 5-2]:

| <i>Original Principal</i> | <i>Unpaid Principal</i> |
|---------------------------|-------------------------|
| \$10,576.00 | \$2,780.52 |
| \$ 5,835.00 | \$1,581.83 |
| \$ 5,963.00 | \$1,694.74 |

Total Unpaid Principal \$6,057.09

14. The loans listed in the letter as having unpaid principal balances due are the same three loans that the Trustee paid in full.

1 15. The May 18, 2020, letter sets out a repayment schedule of 120 monthly payments
2 of \$75.09 each, totaling \$9,010.80, in payment of an unpaid principal balance of \$6,057.09,
3 unpaid interest to be added to the principal of \$0.00, and estimated interest over the life of the
4 loan in the amount of \$2,953.71.

5
6 16. On May 19, 2020, joint debtor Dee Shishido called the contact number on the
7 letter and spoke to a representative.

8 17. Debtor Dee Shishido informed the representative that she and her husband had
9 completed their Chapter 13 bankruptcy and received a discharge. She also told the representative
10 that the student loans that were listed in the May 18, 2020, letter had been paid in full during the
11 course of the bankruptcy.
12

13 18. The representative responded that there was no record of the Debtors' bankruptcy
14 or of any payments having been made on the student loans.
15

16 19. The web address provided on all of the Navient correspondence directed to the
17 joint debtor is navient.com, which is the web address of Navient Corporation.

18 20. The invoices with attached payment coupons instruct the joint debtor to make
19 checks payable to "Navient."
20

21 21. The current President and CEO of Navient Corporation is Jack Remondi, 123
22 Justison Street, Wilmington, DE 19801.

23 22. The three student loan accounts and account balances are disclosed on joint
24 debtor's credit report with the creditor shown as "Navient" and the address provided is the
25 address of the corporate headquarters of Navient Corporation in Wilmington, Delaware.
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1 23. On May 26, 2020, Debtors filed and served a motion for an order of contempt for
2 breach of the confirmed plan and order of confirmation and violations of 11 U.S.C. §524(i) and
3 the discharge injunction. [Dkt. 48].

4 24. No response was filed to this motion.

5 25. On July 6, 2020, the court entered an order granting Debtors' motion. [Dkt. 52].

6 26. Navient sent payment invoices to joint debtor Dee Shishido dated May 8, 2020,
7 June 10, 2020, and July 10, 2020, continuing to seek payment of the principal amounts that
8 debtors had paid in full during their Chapter 13 bankruptcy. Attached hereto as Exhibits 5, 6, and
9 7, are copies of these invoices.
10

11 27. Joint debtor suffered a massive heart attack on July 19, 2020, resulting in a two-
12 week hospital stay and double bypass surgery.
13

14 28. Joint debtor suffers from diabetes.

15 29. From and after September 8, 2020, Navient has repeatedly called and texted joint
16 debtor on her cell phone.
17

18 30. The phone calls, texts, and continuing attempts to collect on student loans that
19 were paid in full through Debtors' Chapter 13 bankruptcy has caused extreme stress and anxiety
20 to Debtors.
21

22 31. Joint debtor's recovery from her bypass surgery has been negatively affected by
23 the stress and anxiety caused by the ongoing efforts of Navient to collect.
24

25 32. The conduct of Navient in its relentless efforts to collect has caused joint debtor
26 Dee Shishido to suffer high blood pressure, increased glucose levels, sleeplessness, and
27 depression, and has worsened joint debtor's PTSD.
28
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1 33. Debtor Ron Howell has had to take days off work to support and help joint debtor
2 deal with the stress and anxiety she is experiencing.

3 34. The physical symptoms joint debtor Dee Shishido has experienced as a result of
4 the stress and anxiety caused by Navient's conduct has affected her ability to work and operate
5 her business.
6

7 35. On August 12, 2020, Debtors filed and served a motion for an order of contempt
8 for breach of the confirmed plan and order of confirmation and violations of 11 U.S.C. §524(i)
9 and the discharge injunction. [Dkt. 54].
10

11 36. Navient did not respond to Debtors' motion.

12 37. On September 30, 2020, the court entered an order granting debtors' motion and
13 finding Navient in contempt of court for having willfully violated the discharge order, 11 U.S.C.
14 §524(i), the confirmed plan, and the order of confirmation. [Dkt. 57].
15

16 38. On October 20, 2020, the court sua sponte closed Debtors' case.

17 39. On November 11, 2020, Debtors moved to reopen the case and paid the reopening
18 fee of \$235.00 even though they were exempt from payment of the fee because they were
19 attempting to bring a motion for a discharge violation. [Dkt. 58].
20

21 40. Navient sent payment invoices to joint debtor Dee Shishido dated August 10,
22 2020, September 10, 2020, and October 11, 2020, continuing to seek payment of the principal
23 amounts that debtors had paid in full during their Chapter 13 bankruptcy. Attached hereto as
24 Exhibits 8, 9, and 10, are copies of these invoices.
25

26 41. Navient sent past due notices to joint debtor Dee Shishido dated August 22, 2020,
27 September 10, 2020, October 6, 2020, and October 11, 2020. Attached hereto as Exhibits 11, 12,
28 13, and 14, are copies of these past due notices.
29

1 42. On November 4, 2020, Debtors filed and served a notice of presentation of order
2 related to the two orders [Dkt. 52, 57] the court had entered finding Navient in contempt. [Dkt.
3 59].

4 43. On November 4, 2020, Debtors filed and served a motion for an order of
5 contempt for breach of the confirmed plan and order of confirmation and violations of 11 U.S.C.
6 §524(i) and the discharge injunction related to the collections attempts in August through
7 October, 2020. [Dkt. 60].

8 44. Navient did not respond to Debtors' third motion for contempt [Dkt. 60] or notice
9 of presentation or order [Dkt. 59].

10 45. On November 10, Navient sent Debtors a past due notice and payment invoice.
11 Attached hereto as Exhibits 15 and 16 are copies of the past due notice and invoice dated
12 November 11, 2020.

13 46. On November 24, 2020, the court lodged but did enter the orders Debtors had
14 submitted on the two motions in which the court had entered an order of contempt, and the third
15 motion filed after the case was reopened, for improper service.

16 47. The declaration of joint debtor Dee Shishido is submitted as Exhibit 17.

17 48. Debtors have incurred and continue to incur attorney's fees and costs in
18 responding to Navient's conduct.

19 49. The declaration of Debtors' attorney with itemized time is submitted as Exhibit
20 18.

21 50. Navient's post discharge efforts to collect the student loans that were paid in full
22 during the Debtors' bankruptcy and Navient's failure to credit payments received under Debtors'

1 plan breached the confirmed plan and order of confirmation and are willful violations of 11
2 U.S.C. §524(i) and the discharge injunction.

3 **WHEREFORE**, Debtors respectfully request that the Court enter its Order:

4 A. Finding Navient in civil contempt of court for violation of the discharge
5 injunction;
6

7 B. Finding Navient in civil contempt for breach of the confirmed plan and order of
8 confirmation, and violation of 11 U.S.C. §524(i);

9 C. Awarding Debtors their actual damages in the amount of \$80,000;

10 D. Awarding Debtors their reasonable attorney's fees and costs in the amount of
11 \$9,310;
12

13 E. Awarding Debtors the sum of \$15,000 as punitive damages;

14 F. Awarding Debtors such other and further relief as the Court may deem just and
15 proper.
16

17 Dated: November 29, 2020.

/s/Cawood K. Bebout
Cawood K. Bebout, WSBA #34904
Attorney for Debtors